RICKY B ADAM

v.

PP
& ANOTHER APPEAL

COURT OF APPEAL, KUALA LUMPUR
SHAIK DAUD ISMAIL JCA
MOHD SAARI YUSOFF JCA
ABDUL KADIR SULAIMAN JCA
[CRIMINAL APPEAL NOS: S-05-60-96 & S-05-61-96]
3 DECEMBER 2001

CRIMINAL PROCEDURE: *Sentence - Mandatory sentence - Imprisonment for life and whipping - Whether manifestly excessive - No plea in mitigation - Firearms (Increased Penalties) Act 1971, s. 5*

CRIMINAL PROCEDURE: *Appeal - Sentence, against - Power and duty of appellate court - When should appellate court interfere - Whether trial judge erred in law*

Following their pleas of guilty to an amended charge of having firearms whilst in the commission of a scheduled offence (robbery) under s. 5 of the Firearms (Increased Penalties) Act 1971, the appellants were convicted and sentenced to life imprisonment with ten strokes of whipping each. These were the appellants' appeal against the sentences imposed.

Held:

Per Mohd Saari Yusoff & Abdul Kadir Sulaiman JJCA

[1] The sentences imposed by the trial judge were far from being manifestly excessive, considering the circumstances and the manner in which the offence was committed. Apart from the sheer terror they had caused to their victims in the armed robbery, the appellants had callously shot one of them to death. (pp 534 f-g & 536 d-e)

[Appeals dismissed; sentences affirmed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Berikutan pengakuan bersalah mereka kepada satu pertuduhan terpinda kerana memiliki senjata api ketika menjalankan satu kesalahan terjadual (rompakan) di bawah s. 5 Akta Senjata Api (Penalti-Penalti Dipertingkatkan) 1971, perayu-perayu telah disabitkan dan dijatuhkan hukuman pemenjaraan sepanjang hayat dengan sepuluh sebatan rotan setiap satunya. Ini adalah rayuan perayu-perayu terhadap hukuman yang dikenakan.

Diputuskan:
Oleh Mohd Saari Yusoff & Abdul Kadir Sulaiman HHMR

[1] Hukuman-hukuman yang dikenakan oleh hakim perbicaraan tidak boleh diperkatakan sebagai keterlaluan, memandangkan keadaan dan cara kesalahan tersebut dilakukan. Selainkan daripada ketakutan amat sangat yang telah mereka sebabkan ke atas mangsa-mangsa di dalam rompakan bersenjata tersebut, perayu-perayu telah tanpa belas kasihan menembak mati salah seorang mangsa tersebut.

[Rayuan-rayuan ditolak; hukuman diikrarkan.]

Case(s) reffered to:
Leong Ka Kong v. PP [1976] 2 MLJ 21 ***(refd)***

Legislation referred to:
Firearms (Increased Penalties) Act 1971, s. 5
Penal Code, s. 302

For the Public Prosecutor - Noraini Zulkifli DPP

[Appeal from High Court, Sandakan; Criminal Trial Nos: S(45) 01-1996 & S(45) 02-1996]

Reported by Gan Peng Chiang

JUDGMENT

Mohd Saari Yusoff HMR:
Selepas penghakiman lisan, YA Datuk Shaik Daud bin Md. Ismail bersara. Oleh itu, dalam alasan penghakiman ini, perkataan "kami" bermakna YA Datuk Kadir bin Sulaiman dan saya. Perayu-perayu tidak diwakili oleh peguam.

Untuk tujuan prosiding ini, Ricky b. Adam dipanggil "perayu pertama", sementara Yunus b. Mindalanu dipanggil "perayu kedua".

Rayuan dibuat terhadap hukuman sahaja. Kedua perayu telah mengaku salah kepada pertuduhan pindaan seperti berikut dan didapati bersalah dan disabitkan:

> That you both, on the 14th day of July, 1995 at about 7.00 pm at the Masih Jaya Sdn. Bhd. workers Quarters at Ladang Syarimo, Kinabatangan, in the District of Kinabatangan, in the State of Sabah, in furtherance of a common intention, at the time of committing a scheduled offence, to wit robbery, had on each of you, a firearm to wit a home made shotgun (Bakakuk) and thereby you both have committed an offence under Section 5 of the Firearms (Increased Penalties) Act 1971 and punishable under the same provision read together with Section 34 of the Penal Code.

Fakta kes adalah seperti berikut: Pada 14 Julai 1995 lebih kurang pukul 7 malam, dengan bersenjatakan senapang patah, perayu berdua menceroboh masuk rumah pekerja-pekerja di Ladang Syarimo, Kinabatangan, Sabah untuk merompak. Semasa dalam rumah tersebut, mereka berdua memaksa penghuni-penghuni menyerah wang dan barang-barang termasuk jam tangan dan TV.

Kemudian, mereka berdua memaksa salah seorang penghuni yang bernama Wong Teck Fui ("Wong") supaya menghantar mereka ke ladang Lion Gumantang. Setiba di pintu pagar ladang tersebut, mereka memaksa Wong berjalan bersama mereka ke dalam ladang. Sebaik sahaja Wong berjalan sejauh satu kilometer, perayu kedua yang pada masa itu mengekori Wong menembak Wong di kepala. Wong mati serta-merta di tempat kejadian.

Pada 17 Julai 1995, pihak polis berjaya memberkas perayu berdua. Pihak polis juga berjaya mendapat balik dari rumah mereka sebahagian daripada barang-barang yang dicuri. Pada hari yang sama, pihak polis menjumpai mayat Wong dalam semak di ladang Lion Gumantang apabila mereka berdua membawa anggota-anggota polis ke tempat tersebut.

Dalam kes ini, adalah diperhatikan bahawa kedua perayu tidak sahaja rnengambil wang dan barang-barang penghuni malah seorang penghuni telah ditembak mati. Dari perspektif undang-undang, perbuatan mereka itu amatlah kejam.

Bagi kesalahan di bawah s. 5 Firearms (Increased Penalties) Act 1971, hukuman mandatori ialah penjara seumur hidup dan enam kali sebatan rotan sekurang-kurangnya. Dalam kes ini, hakim bicara telah mengenakan hukuman ke atas perayu-perayu penjara seumur hidup dan sepuluh kali sebatan rotan. Dalam penghujahannya, mereka telah mendesak agar hukuman diringankan. Sehubungan dengan ini, pada prinsipnya, mahkamah rayuan hanya boleh mengubah hukuman yang dijatuhkan oleh hakim bicara, jika hakim bicara telah khilaf dari segi undang-undang (lihat *Leong Ka Kong v. PP* [1976] 2 MLJ 21). Walaubagaimanapun dalam kes ini, selepas kami menimbangkan fakta kes dan hal keadaan sekeliling, kami berpendapat bahawa hakim bicara tidak terkhilaf dengan menjatuhkan hukuman tersebut. Justeru itu, kami menolak rayuan dan mengekalkan hukuman.

Abdul Kadir Sulaiman JCA:

These two appeals were heard together. Both the appellants were jointly charged and tried in the High Court in Sabah and Sarawak at Sandakan on the following amended charge:

that you both, on the 14th day of July, 1995 at about 7.00 pm at the Masih Jaya Sdn. Bhd. Workers Quarters at Ladang Syarimo, Kinabatangan, in the District of Kinabatangan, in the State of Sabah, in furtherance of a common intention, at the time of committing a scheduled offence, to wit robbery, had on each of you, a firearm to wit a home made shotgun (Bakakuk) and thereby you both have committed an offence under Section 5 of the Firearms (Increased Penalties) Act 1971 and punishable under the same provision read together with Section 34 of the Penal Code.

To this amended charge, both the appellants pleaded guilty and were accordingly convicted of the offence charged. In the High Court, one counsel was assigned to each of the appellant by the court. Upon their convictions, the two counsel did not make any plea in mitigation for the reason given that of the nature of the penalty which is mandatory life imprisonment and whipping of not less than six strokes upon conviction. However, both the appellants on their own prayed to the learned judge for leniency in the sentence to be imposed. For the appellant in Criminal Appeal No: S-05-60-96, he informed the court that he was 22 1/2 years old and felt sorry for the offence for he had made a mistake. For the appellant in Criminal Appeal No: S-05-61-96, he informed the court that he had no relative in Sabah as he was from the Philippines.

According to the facts of the case as so presented by the learned deputy to the High Court, pursuant to a plan, both the appellants went to the estate at about 2pm with the intention to rob. They brought along with them for the purpose, two homemade shotguns (Bakakuk). They took a rest at the scene for nightfall. At about 7pm they proceeded to the workers quarters to carry out their plan. The appellant in Criminal Appeal No: S-05-60-96 wore a mask. Upon arrival at the said quarters, he immediately pointed his shotgun at the occupants in the kitchen watching television. He threatened and demanded them to hand over all their monies and valuables. Being dissatisfied with the slow pace taken by the occupants to surrender their valuables, he fired a warning shot which hit the kitchen wall. All the surrendered items which included wrist watches, telephone and television sets, monies, a chainsaw, gold bracelets and necklaces were put inside two gunny sacks. Not contented with the loot, both the appellants then demanded for a getaway vehicle and a driver. One of the occupants took his pick-up vehicle and drove them away until they reached the gate to Lion Gumantong plantation when he was asked to stop and get out of the vehicle. He was then forced to walk with them from there. After walking for about 1km into the plantation, the appellant in Criminal Appeal No: 8-05-61-96, who was then walking behind the other appellant and the victim, fired a shot which hit him on the head resulting in his instant death. The deceased fell and died instantly. They then fled from the scene.

Later, in the house of the appellant in Criminal Appeal No: S-05-60-96 the police recovered a homemade shotgun, two live bullets and a chainsaw. From the house of the other appellant, the police found among other things, a home made shotgun, a television set, wrist watches and gold bracelets. Later, the two appellants led the police to the recovery of the body of the deceased which was among some bushes in the Lion Gumantong plantation. By then the body was in a state of decomposition. However, it was confirmed that the injuries found on the body were consistent with that of gunshot injuries.

Having all the aforesaid matters placed before him, the learned judge of the High Court sentenced each of the appellants to life imprisonment as mandated by law and ten strokes of whipping.

Dissatisfied with the sentence imposed, each of the appellants filed the present appeal. Before us, both the appellants merely prayed for a reduction in the sentences imposed by the learned judge. Upon the realisation that both of them before us were unrepresented by counsel, however, on the law, the sentence so imposed by the learned judge upon each of them is far from being manifestly excessive taking into consideration the circumstances and the manner the offence was committed by the two appellants. Apart from the terror caused upon the occupants of the house where the robbery took place an innocent life was lost unnecessarily. They were lucky for not being charged for the offence of murder under s. 302 of the Penal Code. In the circumstances, on 10 July 2001 when we heard the appeal, we were unanimous in dismissing the appeals of the two appellants. The decision of the learned judge was accordingly affirmed.